

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

2 NO. C 07-02757

3 DONNA MATHEWS

4 VERSUS

5 PAN AMERICAN LIFE INSURANCE COMPANY;
6 And Doe 1 through Doe 20, Inclusive
7 VOLUME I
8 Videotape deposition of CORY R. SIMON,
9 601 Poydras Street, New Orleans, Louisiana
10 70130, taken in the offices of Affiliated
11 Reporting, 650 Poydras Street, Suite 2610,
12 New Orleans, Louisiana 70130 on Thursday,
13 March 13, 2008.

14 APPEARANCES:

15 LAW OFFICE OF MICHAEL E. KINNEY
16 Attorneys at Law
17 BY: MICHAEL E. KINNEY, Esquire
18 438 First Street, Fourth Floor
19 Santa Rosa, California 95401
20 ATTORNEYS FOR PLAINTIFF

21 REED SMITH
22 Attorneys at Law
23 BY: THOMAS E. EVANS, Esquire
24 1999 Harrison Street, Suite 2400
25 Oakland, California 94612

26 ATTORNEYS FOR DEFENDANT

27 PAN AMERICAN LIFE
28 Attorneys at Law
29 By: PATRICK C. FRAIZER, Esquire
30 601 Poydras Street
31 New Orleans, Louisiana 70130
32 ATTORNEYS FOR DEFENDANT

1

2

3

4

5

6 VIDEOGRAPHER: KARL STEGEMAN

7

8

9 REPORTED BY:

10

11 LINDY ROOT

12 Certified Court Reporter

13 Registered Professional Reporter

14

1 DONNA MATHEWS VS.
2 PAN AMERICAN LIFE INSURANCE COMPANY; and
3 Doe 1 through Doe 20, Inclusive
4 Deposition of CORY R. SIMON
5 Taken on March 13, 2008

INDEX

S T I P U L A T I O N

It is stipulated and agreed by and
between counsel for the parties hereto that
the deposition of the aforementioned
witness is hereby being taken under the
Federal Rules of Civil Procedure, for all
purposes, in accordance with law;

That the formalities of reading and signing are specifically not waived;

That the formalities of sealing,

certification and filing are specifically waived;

That all objections, save those as to

the form of the question and the

responsiveness of the answer, are hereby

reserved until such time as this

deposition, or any part thereof, may be

used or sought to be used in evidence

* * * *

Reporter, and Certified Court Reporter, in
and for the Parish of Orleans, State of
Louisiana, officiated in administering the
oath to the witness.

1 (Video introduction.)

2 MR. KINNEY:

3 Michael Kinney for the plaintiff.

4 MR. EVANS:

5 This is Thomas Evans for the
6 defendant, Pan American Life.

7 CORY R. SIMON,

8 after having been first duly sworn by the
9 above-mentioned court reporter, did testify
10 as follows:

11 EXAMINATION BY MR. KINNEY:

12 Q. State your name for the record.

13 A. Cory Simon.

14 Q. What is your address -- business address?

15 A. 601 Poydras Street, New Orleans, Louisiana
16 70130.

17 Q. And is that a business address?

18 A. That's correct.

19 Q. And what business is located at that
20 address?

21 A. Pan American Life Insurance Group.

22 Q. And you're employed by Pan American Life
23 Insurance Group?

24 A. I am.

25 Q. Okay. What is your job title?

26

1 A. Chief claims officer.

2 Q. I am going to direct a question here to
3 your attorney.

4 MR. KINNEY:

5 Mr. Evans, I understand that Pan
6 American has designated Mr. Simon as
7 the person most knowledgeable on
8 certain questions that I requested
9 that they make such a designation.

10 Is that right.

11 THE WITNESS:

12 That's correct.

13 MR. KINNEY:

14 Okay. And can we put it on the
15 record what subjects he has been
16 designated on?

17 MR. EVANS:

18 It's subjects 2 through 5 of the
19 30(b) (6) notice which I assume will
20 be an exhibit to the deposition.

21 Why don't we go ahead and enter
22 that?

23 MR. KINNEY:

24 Yeah. Let's go ahead and mark
25 that.

26

1 Go off the record a second.

2 THE VIDEOGRAPHER:

3 Going off the record at 10:05.

4 This is videotape number one.

5 (Off the record.)

6 THE VIDEOGRAPHER:

7 Back on the record at 10:09, but

8 my camera obviously says 9:09.

9 Sorry about that.

10 MR. KINNEY:

11 All right. While we were off the

12 record, we marked as Exhibit #1 a

13 copy of the notice of taking

14 deposition of Pan American Life

15 Insurance Company, and that will be

16 part of the deposition.

17 (Exhibit #1 was marked for

18 identification.)

19 EXAMINATION BY MR. KINNEY:

20 Q. Mr. Simon, how long have you been employed

21 by Pan American Life?

22 A. It will be four years in August.

23 Q. And have you had the same job title

24 throughout those four years?

25 A. I have.

26

1 Q. Could you briefly tell me your educational
2 background?

3 A. College. College graduate.

4 Q. What college did you graduate from?

5 A. Brooklyn College.

6 Q. I'm sorry?

7 A. Brooklyn College.

8 Q. Can you spell that?

9 A. B-R-O-O-K-L-Y-N.

10 Q. Okay. And what sort of degree did you get
11 there?

12 A. Business.

13 Q. Do you hold any special licenses of any
14 sort?

15 A. I hold some insurance industry
16 designations.

17 Q. Okay. Could you tell me what those are?

18 A. One is through an organization called ICA,
19 International Claims Association, and that
20 designation is Associate of Life and Health
21 Claims or ALHC.

22 The other is through an insurance
23 industry organization called LOMA, and
24 through that I have an Associate of
25 Customer Service, also known as ACS.

26

1 Q. Do you know -- What does one have to do in
2 order to become an Associate of Life and
3 Health Claims?

4 A. It is a series of four courses of study
5 along with testing regarding those
6 subjects.

7 Q. Okay. And when did you become an Associate
8 of Life and Health Services?

9 A. 1999.

10 Q. And what does one have to do to become an
11 Associate of Customer Service?

12 A. I believe it's a series of five insurance
13 courses with corresponding exams.

14 Q. Who is LOMA?

15 A. LOMA is an insurance organization. It's
16 Life Organization or Operational Management
17 Association. It's insurance industry.

18 Q. When did you become an Associate of
19 Customer Service?

20 A. I believe in 2004.

21 Q. The classes that you take to become an
22 Associate of Customer Service, could
23 you -- do you recall the subjects of those
24 classes?

25 A. There are four I would say general
26

1 insurance education classes that would
2 consist of insurance administration, life
3 and health law, life and health marketing,
4 and then the customer service oriented
5 course work.

6 Q. Okay. And going back to the associate
7 of life and health claims, do you recall
8 the courses you had to take to become one?

9 A. It is also similar. It is general
10 insurance course work along with claims
11 administration, life and -- general life
12 and health insurance law, and medical and
13 dental course work.

14 Q. Have you ever had your deposition taken
15 before?

16 A. I have.

17 Q. How many times?

18 A. Twice.

19 Q. Well, at the risk of repeating some things
20 that you probably have already heard and
21 know from the prior depositions, I will go
22 over very basically the ground rules we are
23 under here.

24 You have been sworn to tell the truth.

25 It's the same oath that you would take in a

26

1 court of law even though we're in the
2 informal surroundings of the court
3 reporter's office.

4 You have the same obligation to tell
5 the truth today as you would if this matter
6 were to go forward in a court of law.

7 Do you understand that?

8 A. I do.

9 Q. You have to answer out loud, as you're
10 doing, because the court reporter only
11 takes down the out loud statements, and
12 nods of the head and those sorts of
13 gestures don't really work, although the
14 videographer will pick those up.

15 Try not to use uh-huh or uh-uh --

16 A. Uh-huh (affirmative response).

17 Q. -- in your answers, because sometimes those
18 are confused on the record. Better to have
19 a clear record for everybody.

20 A. Okay.

21 Q. When the deposition is completed, the court
22 reporter is going to type up a transcript
23 of the record, and you will have a chance
24 to read over that transcript and to make
25 any changes in the transcript that you feel

26

1 appropriate.

2 If you make any changes, I or any other
3 attorney who is involved in the case can
4 comment on the fact that you have made
5 changes, and if they are significant
6 changes that could change the outcome of
7 the case. That could be important.

8 So it's important for everyone that you
9 give each question some thought and try to
10 give your correct answer today so you don't
11 have to make any major changes
12 substantively to the deposition transcript.

13 Do you understand that?

14 A. I do understand.

15 Q. Okay. If I ask you a question and you
16 don't understand it, tell me, and I will
17 try to rephrase the question.

18 If I ask a question and you don't
19 recall the answer, tell me that. You don't
20 have to guess at something. If you don't
21 know the answer, say so.

22 If you do understand the question, then
23 please answer it to the best of your
24 ability.

25 Is there any reason why we can't

26

1 proceed with your deposition at this time?

2 A. No.

3 Q. You haven't had any medication today that

4 would affect your ability to testify?

5 A. No.

6 Q. Have you ever given any written or recorded

7 statement about this case?

8 A. Not to my knowledge.

9 Q. Okay. Did you review any documents before

10 coming to the deposition?

11 A. No.

12 Q. How old are you?

13 A. 44.

14 Q. Okay. Prior to becoming employed with Pan

15 Am, where were you employed?

16 A. Swiss Re Life & Health in New York City.

17 Q. How long were you there?

18 A. Seven years.

19 Q. And what jobs did you hold there?

20 A. I was the director of claims.

21 Q. Throughout your entire seven years?

22 A. No. I believe I started out as a senior

23 claims examiner.

24 Q. Just those two jobs then, senior claims and

25 director --

26

1 A. Those were the two, you know, titles that I
2 held there.

3 Q. Okay. And Swiss Re, is that a reinsurance?

4 A. Correct.

5 Q. And what sorts of claims did you handle for
6 Swiss Re?

7 A. Individual life, group life, individual
8 disability, and group disability, and their
9 corresponding components. Waiver of
10 premium and things of that nature.

11 Q. But it was all in the life and disability
12 area?

13 A. That's correct.

14 Q. So that takes us back 11 years ago. Is
15 that right?

16 Approximately?

17 A. 1997, 1998, around there, yeah.

18 Q. Immediately prior to Swiss Re, where were
19 you employed?

20 A. The company has changed names, but I
21 believe they are known as ING now.

22 Q. That's an insurance company?

23 A. Yes.

24 Q. And how long were you with ING?

25 A. I believe a year and a half.

26

1 Q. What did you do there?

2 A. I was the claims examiner for life, health,
3 and disability claims.

4 Q. Prior to ING, had you worked in claims for
5 an insurance company?

6 A. Yes.

7 Q. Okay. Why don't you just briefly give me
8 your background in claims for insurance
9 companies?

10 A. Well, I have been in a claims capacity now
11 for 25 years since 1984 with increasingly
12 higher authority and increased title and
13 responsibilities.

14 Q. And just -- And could you give me the list
15 of the companies that you have worked for
16 since '84 up to --

17 A. Amalgamated Life Insurance Company was 1984
18 through 1988 or '89.

19 National Benefit Life Insurance
20 Company -- And all of these are located in
21 New York City. National Benefit Life
22 Insurance Company from '89 through 1995.

23 ING from 19 --

24 Q. Yeah. Okay.

25 So we are back to ING and --

26

1 A. Correct.

2 Q. -- I have got your history since then?

3 A. That's correct.

4 Q. As chief claims officer at Pan American

5 Life, what in general are your job duties?

6 A. To ensure day-to-day operations, timeliness

7 of payment of claims, reviewing and

8 advising on complex matters.

9 Q. We are here about claims that arise under a

10 disability income policy and an income

11 protection policy.

12 Other than the general disability area,

13 what sorts of claims do you deal with at

14 Pan American?

15 A. Life. Life insurance claims.

16 Q. So it's all life and disability?

17 A. That's correct.

18 Q. To your knowledge does Pan American offer

19 insurance outside the life and disability

20 area?

21 A. They do.

22 Q. What other sorts of insurance do they

23 offer?

24 A. They offer a work site type product.

25 Generally a health benefit.

26

1 Q. And do you deal with claims that arise
2 under the health benefits policies?

3 A. I do not.

4 Q. Okay. Are those claims handled in a
5 different department than yours?

6 A. They are.

7 Q. Okay. Are you the head of the claims
8 department?

9 A. For the life and disability operations.

10 Q. Okay. Who do you report to in terms of
11 structure?

12 A. I report to the vice-president of
13 administration. I'm not sure -- I think
14 her exact title is service delivery.

15 Q. And what is her name?

16 A. Judy Norwalt, N-O-R-W-A-L-T.

17 Q. In the department that you manage, how many
18 employees are there?

19 A. I have -- Give me one moment.

20 I have five employees in the life and
21 disability. I also manage a separate
22 department of customer service telephone
23 representatives, and there are ten
24 employees in that department.

25 Q. All right. The five employees in life and
26

1 disability, are they claims personnel?

2 A. They are claims personnel.

3 Q. Okay. And the ten employees in customer

4 service, are they also claims personnel?

5 A. No. They are general representatives for

6 all aspects of the company.

7 Q. Okay. One of the names that's come up in

8 this case is Elaine Bourg.

9 A. Correct.

10 Q. Do you know Elaine Bourg?

11 A. I do.

12 Q. Did she work for you?

13 A. She did.

14 Q. Okay. Was she among the employees in the

15 life and disability area?

16 A. She was.

17 Q. Okay. And another name that's come up in

18 this case is Michael Jones.

19 Do you know Mr. Jones?

20 A. I do.

21 Q. Is he currently employed at Pan American?

22 A. He is.

23 Q. Does he work for you?

24 A. He does.

25 Q. Is he also in the life and disability area?

26

1 A. He is.

2 Q. Okay. Have there been -- Over your four
3 years at Pan American, have there been
4 consistently around five employees in the
5 life and disability area?

6 A. Yes.

7 Q. Okay. And so at one time Ms. Bourg and
8 Mr. Jones were two of the five employees.
9 Is that right?

10 A. That's correct.

11 Q. Okay. Are you counting yourself as one of
12 the five employees?

13 A. No.

14 Q. Okay. On a monthly basis, how many claims
15 are handled by the five employees in the
16 life and disability area?

17 A. Specifically to life claims or disability
18 claims or overall?

19 Q. Well, let me ask you -- That's a good
20 distinction.

21 Of the five employees, are they
22 specialized between the life claims and the
23 disability claims?

24 A. Yes.

25 Q. Okay. How many deal with the life claims?

26

1 A. Three of the five.

2 Q. Okay. And then I take it the two deal with
3 disability claims.

4 A. Correct.

5 Q. Is that right?

6 A. That's correct.

7 Q. Okay. And is there any crossover?

8 I mean do sometimes the life reps deal
9 with disability claims or not?

10 A. Rarely.

11 Q. Okay. Well, then let's just stick with the
12 disability claims.

13 A. Okay.

14 Q. On a monthly basis -- if you can give me an
15 answer to this -- how many disability
16 claims are processed by the two claims reps
17 who handle those?

18 A. About 132 to 135.

19 Q. Has that been relatively constant over your
20 four years?

21 A. Yes.

22 Q. Okay. Was Ms. Bourg working for Pan
23 American when you first came on board?

24 A. No.

25 Q. And Mr. Jones, was he?

26

1 A. He was working as a temporary when I came
2 on board.

3 Q. Do you know when Ms. Bourg was hired by Pan
4 American?

5 A. I believe either October or November of
6 2004.

7 Q. Okay. Did she receive any training at Pan
8 American after she came on board?

9 A. She did.

10 Q. Do you know what training she received?

11 A. She received general training in the area
12 of a support staff. Which forms to mail
13 out, how to order medical records, how to
14 follow up on certain items, and how to cut
15 our disbursement checks.

16 Q. Okay. Did she receive any training as to
17 determining whether somebody was disabled
18 or not?

19 A. No.

20 Q. Since you have been employed by Pan
21 American, to your knowledge has Mr. Jones
22 received any training from Pan American?

23 A. In the formal sense, no.

24 Q. Okay. By the formal sense, I take it you
25 mean he hasn't attended any specific

26

1 classes?

2 A. Correct.

3 Q. Okay. Do you know if he has attended any
4 specific classes in the subject of
5 insurance outside of classes offered by Pan
6 American since you have been employed by
7 Pan American?

8 A. He has not.

9 Q. Okay. Have you personally advised
10 Mr. Jones on aspects of handling disability
11 claims?

12 A. Yes.

13 Q. Okay. Other than what you have personally
14 told him, to your knowledge has he had any
15 training in handling disability claims?

16 A. He came with experience in handling
17 disability claims.

18 Q. Okay. Could you briefly tell me what you
19 understand his experience to be?

20 A. Michael has worked in multiple companies as
21 a temporary consultant handling different
22 aspects of claims, including disability
23 claims.

24 Q. Okay. Now, earlier in the deposition you
25 gave me some subjects that you had -- I

26

1 don't know -- What do you call the
2 associated -- association of life and
3 disability claims?

4 A. That's called ICA, International Claims
5 Association.

6 Q. All right. The ICA or LOMA designations
7 that you received, does Mr. Jones have such
8 similar designations?

9 A. He does not.

10 Q. Have you personally received any training
11 from Pan American regarding Pan American's
12 disability policies?

13 A. No.

14 Q. Okay. Prior to coming to Pan American, in
15 your experience handling disability
16 policies, had you ever been required to
17 address the issue of rehabilitation
18 benefits?

19 A. No.

20 Q. Okay. Have you received any special
21 training from any source on rehabilitation
22 benefits?

23 A. No.

24 Q. Okay. The 132 to 135 claims a month in the
25 disability area that are processed by Pan

26

1 American, what proportion of those do you
2 personally look at?

3 A. The 132 to 135 are a combination of new,
4 pending, and ongoing claims. I look at
5 a -- I would say I look at about 50 percent
6 of the new claims that come into Pan
7 American.

8 Q. Okay. And do you regularly review the
9 ongoing claims as well?

10 A. Some of them.

11 Q. Okay. Is there some criteria that you use
12 to decide whether to look at a new claim?

13 A. No.

14 Q. Okay. So they are just random choices?

15 A. Well, they are random choices through an
16 audit process.

17 Q. Well, could you explain what an audit
18 process is?

19 A. I generally look at -- you know, in all
20 aspects of the department, I generally take
21 a sampling of all claims that come into the
22 company that are processed for payment.

23 Q. Okay. So is there anything about the
24 claims, the new claims that makes you
25 decide to look at them in particular?

26

1 A. No.

2 Q. Okay. And the ongoing claims --

3 A. Uh-huh (affirmative response).

4 Q. Is it the same thing, a sort of generalized
5 selection, or are there criteria that you
6 use to --

7 A. No. The ongoing claims are those that we
8 deem with some disability are reviewed once
9 a year. So I will generally look at a few
10 of those each year.

11 Q. Okay. But there are no specific things
12 that automatically require that you review
13 a claim. Is that right?

14 A. No.

15 Q. Okay. Sometimes do the claims
16 representatives bring you problem claims?

17 A. Yes.

18 Q. Okay. So when those problems are brought
19 to you, of course, you review those.

20 Is that right?

21 A. That's correct.

22 Q. Okay. Of the 132 to 135 claims that are
23 processed a month in the disability area of
24 Pan Am, how many of those on average
25 contain a claim for rehabilitation

26

1 benefits?

2 A. To my knowledge, there have been two or
3 three prior claims.

4 Q. Total?

5 A. Total.

6 Q. Okay. As you sit here today, do you have a
7 recollection of reviewing two or three
8 claims other than the Mathews claim for
9 rehab benefits?

10 A. I have a recollection -- a very good
11 recollection of one. A slight recollection
12 of another.

13 Q. Okay. So that would be two?

14 A. Correct.

15 Q. Okay. Did Pan Am provide rehabilitation
16 benefits to either of those claimants?

17 A. No.

18 Q. So to your knowledge, since you have been
19 at Pan American, no claimant has received
20 rehabilitation benefits.

21 Is that correct?

22 A. That is correct.

23 Q. Have you made any investigation to see
24 whether Pan American provided any
25 rehabilitation benefits to any claimant

26

1 prior to your tenure at Pan Am?

2 A. No.

3 Q. No, you have never?

4 A. No, I have not done that.

5 Q. Okay. Have you asked anyone whether Pan Am
6 has ever provided any rehabilitation
7 benefits?

8 A. No.

9 Q. Okay. If you were to ask that question,
10 who would you ask?

11 A. Most likely somebody from our controller's
12 department.

13 Q. During your tenure at Pan Am, has Pan Am to
14 your knowledge ever suggested to a claimant
15 that the claimant seek rehabilitation?

16 A. Not to my knowledge.

17 Q. And we are talking about occupational --

18 A. I understand.

19 Q. Let me just -- It's important that the
20 court reporter get both of us, and if we
21 both talk at the same time the record comes
22 out all garbled.

23 Well, when I say rehabilitation
24 benefits, I'm talking about occupational
25 rehabilitation benefits.

26

1 Is that how you understood it?

2 A. Yes.

3 Q. Okay.

4 MR. EVANS:

5 You know, just to interpose an

6 objection to that as vague.

7 MR. KINNEY:

8 Vague?

9 MR. EVANS:

10 Whatever you mean by occupational

11 rehab.

12 EXAMINATION BY MR. KINNEY:

13 Q. Okay. Vocational rehabilitation, do you

14 understand what I mean by that?

15 A. Yes.

16 MR. EVANS:

17 Same objection.

18 EXAMINATION BY MR. KINNEY:

19 Q. When a claimant requests rehabilitation

20 benefits, what is Pan Am's process for

21 reviewing and deciding on that claim?

22 A. Generally we would find out what type of
23 occupational vocational rehabilitation and
24 into what field for future employment the
25 insured would want to take on.

26

1 Q. Anything else?

2 A. We generally ask them for some type of
3 action plan that would describe what the
4 course of study would be, how long it would
5 take, how they expect this to accomplish
6 their goal of returning to work.

7 Q. Okay. Anything else in terms of
8 information you would request?

9 A. No.

10 Q. Okay. And what criteria would you use to
11 decide whether or not to provide the
12 rehabilitation benefits?

13 A. If it was -- If it would result in an
14 occupation whereas the insured or claimant
15 would be able to return to normal full-time
16 work.

17 Q. That's the only criteria?

18 A. We would also -- Once they returned to such
19 normal full-time work, we would expect the
20 claim to end at that point.

21 Q. Anything else that would be a criterion in
22 determining whether or not to grant the
23 rehabilitation benefits?

24 A. Not to my knowledge.

25 Q. Okay. The two other rehabilitation claims
26

1 that you recall as you sit here today, do
2 you recall what criteria they failed to
3 meet?

4 A. They failed to meet -- to provide us with
5 a -- you know, an action plan or even an
6 occupation in which they wished to
7 endeavor.

8 Q. One of these claims you recall fairly
9 clearly. Is that right?

10 A. Correct.

11 Q. Let's talk about that one just for a
12 minute.

13 In that claim, the claimant -- Well,
14 what did the claimant ask for?

15 A. The claimant asked for some type of voice
16 to speech software and, you know, training
17 on that software. You know, on that
18 software or those types of systems.

19 Q. Do you recall what his disability was?

20 A. Quadriplegic.

21 Q. Okay. And do you know what occupation he
22 hoped to pursue with that?

23 A. There was no occupation.

24 Q. Okay. Did Pan Am do any study to determine
25 whether he could perform an occupation if

26

1 he had the voice to speech software?

2 A. No.

3 Q. Okay. So you relied entirely upon him to
4 tell you what occupation?

5 A. The person didn't provide an occupation.

6 They wanted this rehabilitation really
7 to enhance their day-to-day -- or it was
8 actually a her. Her day-to-day living.

9 Q. The other claim that you recall, but not as
10 clearly --

11 A. Uh-huh (affirmative response).

12 Q. -- do you recall why -- Strike that.

13 Do you recall what criteria that
14 claimant failed to meet for rehabilitation
15 benefits?

16 A. I think -- No. I don't recall what
17 criteria they failed to meet on that one.

18 Q. Okay. Do you recall what rehabilitation
19 they requested?

20 A. They requested I believe some training,
21 education, or schooling to become a real
22 estate agent.

23 Q. Do you recall what the disability was?

24 A. I don't.

25 Q. Do you recall why Pan Am declined to

26

1 provide that rehabilitation?

2 A. I don't.

3 Q. Do you recall what the claimant had done

4 prior to that?

5 A. No.

6 Q. Does Pan American Life Insurance Company

7 utilize a claims manual in connection with

8 disability claims?

9 A. We do not.

10 Q. Okay. Well, I requested and counsel

11 provided me with a document which I would

12 like to talk to you about.

13 A. Uh-huh (affirmative response).

14 Q. Here's one for you.

15 We will mark that as the next exhibit,

16 which would be Exhibit #2, for the purposes

17 of this deposition.

18 And I show you this document,

19 Mr. Simon, and ask you if you can identify

20 it?

21 (Exhibit #2 was marked for

22 identification.)

23 A. I can.

24 Q. What is it?

25 A. This is a reference guide that we utilize

26

1 from one of our reinsurers.

2 Q. What do you utilize it for?

3 A. General reference.

4 Q. Other than this document, Exhibit #2, is
5 there any other written material that
6 claims personnel use in deciding whether to
7 provide disability benefits?

8 A. Only the policy.

9 Q. Only the policy?

10 A. Correct.

11 Q. How long has Pan American Life Insurance
12 Company been using Exhibit #2 as a
13 reference guide?

14 A. I would say within the last two or three
15 years.

16 Q. Okay. Was it using this reference guide as
17 of December of 2005?

18 A. I can't be sure.

19 Q. Okay. Since you have been at Pan American
20 Life Insurance Company, other than
21 Exhibit #2, has Pan American Life Insurance
22 Company used any written documents as a
23 reference guide for disability claims other
24 than Exhibit #2?

25 A. We have some documents of general

26

1 knowledge.

2 Q. Could you describe those documents?

3 A. Generally they are documents which I
4 acquire from industry conferences,
5 specifically to trends within the industry.

6 Q. Do any of those documents provide guidance
7 for claims personnel in determining whether
8 to grant benefits under a disability
9 policy?

10 A. No.

11 Q. So then since you have been at Pan Am, the
12 only document in writing that provides
13 guidance for claims decisions on disability
14 policies is Exhibit #2.

15 Is that right?

16 MR. EVANS:

17 Objection. Misstates his
18 testimony.

19 EXAMINATION BY MR. KINNEY:

20 Q. You can answer.

21 A. It's okay to answer?

22 MR. EVANS:

23 Yeah.

24 I'm just objecting for the record.

25 Unless I instruct you not to answer,

26

1 you should go ahead and answer.

2 THE WITNESS:

3 Okay. I'm sorry. I just wanted
4 to make sure.

5 Would you repeat the question?

6 EXAMINATION BY MR. KINNEY:

7 Q. Could you read the question back, please?

8 (The requested testimony was read back
9 as follows:

10 Q. So then since you have been
11 at Pan Am, the only document in
12 writing that provides guidance for
13 claims decisions on disability
14 policies is Exhibit #2.

15 Is that right?)

16 THE WITNESS:

17 That's correct.

18 EXAMINATION BY MR. KINNEY:

19 Q. Do the claims personnel who work in your
20 department in the disability area have
21 access to Exhibit #2?

22 A. Yes.

23 Q. Okay. Do they each have a copy of
24 Exhibit #2?

25 A. They do.

26

1 Q. Okay. Have you personally read Exhibit #2?

2 A. Not from cover to cover.

3 Q. You have read parts of it?

4 A. I have read -- I have read the sections in
5 which I needed to seek reference.

6 Q. Do you keep a copy of this Exhibit #2 at
7 your desk?

8 A. I keep an electronic copy of it on my
9 desktop. Right.

10 Q. Okay. The other claims reps -- Strike
11 that.

12 The claims representatives who work for
13 you in disability, is their copy also
14 electronic?

15 A. They have a -- We all have a hard copy or
16 an electronic copy. It's a matter of
17 preference.

18 Q. Okay. I see that this document was
19 prepared by somebody called Munich Re
20 Group.

21 A. Correct.

22 Q. Do you know who that is?

23 A. Yes.

24 Q. Who?

25 A. They are -- They are a reinsurance company.

26

1 They are also one of our reinsurers.

2 Q. Do you know what markets Munich Re
3 occupies?

4 A. Life and health and property and casualty.

5 Q. Okay. And how about geographically where
6 do they reinsure?

7 Do you know?

8 A. Worldwide.

9 Q. Okay. And does Munich Re reinsure some Pan
10 American policies?

11 A. They do.

12 Q. Do they reinsure Pan American disability
13 policies?

14 A. They do.

15 Q. The policies that we are going to talk
16 about in a little bit, the Mathews
17 policies, do they reinsure those policies?

18 A. They do not.

19 Q. Okay. Do you know if anyone reinsures
20 those policies?

21 A. They are not reinsured.

22 Q. Does Munich Re perform any services for Pan
23 American Life Insurance Company?

24 A. Can you expand on that?

25 Q. Well, I will tell you why I asked that. It
26

1 is because somewhere in this Exhibit #2,
2 Munich Re says we will be happy to help you
3 out with any of your claims or anything
4 like that if we can help you.

5 So I'm just curious as to whether or
6 not Munich Re does something for Pan
7 American Life Insurance Company other than
8 just be a traditional reinsurer?

9 A. They will provide advisement services if
10 requested.

11 Q. Okay. Since you have been at Pan American
12 Life Insurance Company, has Pan American
13 requested any advisement services from
14 Munich Re regarding disability claims?

15 A. I couldn't say specifically from Munich.

16 Q. Okay. Has it requested services as to
17 disability policies from any reinsurer?

18 A. We have.

19 Q. Okay. What sorts of services?

20 A. Generally services or recommendations for
21 further outside either investigations or
22 vendors or things of that nature.

23 Q. Okay. Do you know whether any such
24 services were requested from any reinsurer
25 as to the Mathews claims?

26

1 A. No.

2 Q. No, you don't?

3 A. I don't know.

4 Q. Okay.

5 A. I'm sorry.

6 From the reinsurer?

7 Q. Yes.

8 A. No, not from the reinsurer.

9 Q. From any reinsurer?

10 A. No.

11 Q. Okay.

12 A. I don't know. My answer is I don't know if
13 we requested.

14 I'm sorry.

15 Q. That's fine.

16 You know, you're right. We need to get
17 the testimony clear. So thank you for
18 cleaning that up.

19 Who at Pan American decided to use
20 Exhibit #2 as a reference guide?

21 A. This was given to us by the reinsurer as a
22 reference guide. So ultimately it was my
23 decision that this could be helpful.

24 Q. Okay. And before making that decision,
25 you, I take it, read over --

26

1 A. I did.

2 Q. -- the pertinent portions of this?

3 A. I did. I did.

4 Q. Okay. And you agreed with the statements
5 that were made in here. Is that right?

6 A. I agreed that --

7 MR. EVANS:

8 Objection. Calls for speculation.

9 He testified he hasn't read the whole
10 thing.

11 EXAMINATION BY MR. KINNEY:

12 Q. You may answer.

13 A. I agree that there were portions within
14 this document that were relatable to our
15 policy.

16 Q. Okay. Did you -- Strike that.

17 At any time since you first saw
18 Exhibit #2, have you seen anything in
19 Exhibit #2 that you thought was wrong?

20 A. Not as it relates to our policy.

21 Q. You thought that it was wrong about
22 something else?

23 A. I couldn't say if it was wrong about
24 something else. I can only speak to our
25 policy.

26

1 Q. Okay. When you -- Strike that.

2 You personally distributed this to the
3 disability claims personnel.

4 Is that right?

5 A. That's correct.

6 Q. And when you did, did you tell them why you
7 were giving it to them?

8 A. I did.

9 Q. What did you tell them?

10 A. I told them to use this as general
11 reference.

12 Q. Okay. Did you tell them it was good?

13 A. I told them that I thought it had parts
14 that were relevant to our lines of
15 business.

16 Q. Okay. Did you specifically direct them to
17 specific parts of Exhibit #2 that you
18 thought were relevant?

19 A. No.

20 Q. Since you first distributed Exhibit #2 to
21 the claims representatives, have any of the
22 disability claims representatives who work
23 for you asked you any questions about
24 Exhibit #2?

25 A. Not to my knowledge.

26

1 Q. Have any of the disability claims
2 representatives said anything to you at all
3 about Exhibit #2?

4 A. Nothing other than when I initially
5 distributed it.

6 Q. Do you know whether Mr. Jones has read
7 Exhibit #2?

8 A. I couldn't answer for Mr. Jones.

9 Q. Okay. Did you instruct him to read it when
10 you gave it to him?

11 A. No.

12 Q. Okay. And for Ms. Bourg, do you know
13 whether Ms. Bourg has read Exhibit #2?

14 A. I don't believe Ms. Bourg received a copy
15 of this.

16 And if I said that the claims
17 personnel -- We have a distinction between
18 claims personnel, the people who actually
19 adjudicate claims, and support staff.

20 So support staff would not have
21 received this.

22 Q. Okay. Well, I probably should go back and
23 clean up that whole area.

24 A. Okay.

25 Q. Ms. Bourg, do you classify her as claims
26

1 personnel or support staff?

2 A. Support staff.

3 Q. Okay. And Mr. Jones?

4 A. He is claims personnel.

5 Q. Okay. So of the 132 to 135 disability
6 claims per month that are processed at Pan
7 American, all of those are processed by
8 Mr. Jones.

9 Is that right?

10 A. They are all evaluated by Mr. Jones.

11 Q. With the assistance of support staff. Is
12 that right?

13 A. Through the paperwork aspect, as I
14 indicated sending forms, receiving forms,
15 tracking medical records, processing
16 payments.

17 Q. Okay. Well, I am just trying to get a
18 clear picture.

19 I understood from your earlier
20 testimony there were two people in the
21 disability claims area.

22 A. That's correct.

23 Q. And at one time those two people were
24 Mr. Jones and Ms. Bourg?

25 A. That's correct.

26

1 Q. Okay. Now I understand Ms. Bourg is all
2 support.

3 Is that right?

4 A. Ms. Bourg is all support, that's correct.

5 Q. And Mr. Jones is everything else.

6 Is that right?

7 A. That's correct.

8 Q. Okay. So all of the 132 to 135 claims are
9 decided upon by Mr. Jones.

10 Is that right?

11 A. That's correct.

12 THE VIDEOGRAPHER:

13 Excuse me, Counsel. I need to
14 change tapes.

15 MR. KINNEY:

16 Certainly.

17 THE VIDEOGRAPHER:

18 Okay. We are going off the
19 record. It's 11:05. This is the end
20 of videotape number one.

21 (Off the record.)

22 THE VIDEOGRAPHER:

23 We're back on the record. This is
24 the beginning of videotape number
25 two. It's 11:07.

26

1 EXAMINATION BY MR. KINNEY:

2 Q. Back on the record, Mr. Simon.

3 I would like for you to turn to the

4 page that's Bates stamp PAL 1049 of the

5 Exhibit #2.

6 A. Okay.

7 Q. Okay. And the second paragraph from the

8 bottom.

9 A. Okay.

10 Q. Do you see that?

11 A. Uh-huh (affirmative response).

12 Q. The last sentence says in extreme

13 situations they may want to investigate the

14 veracity of the claimant's statements or

15 subject of the claimant --

16 A. I don't have -- I'm sorry. I don't have

17 that on my page.

18 Q. Yes, you do. The second-to-last paragraph,

19 the last sentence.

20 A. Oh, the last sentence. Okay.

21 I'm sorry. Go ahead.

22 Q. In extreme situations they may want to

23 investigate the veracity of the claimant's

24 statements or subject the claimant to an

25 independent medical examination.

26

1 Do you see that?

2 A. I do.

3 Q. Okay. Is that Pan American's policy?

4 A. Yes.

5 Q. That you only require independent medical
6 examinations in extreme situations?

7 MR. EVANS:

8 Objection. Misstates the
9 testimony and the document.

10 EXAMINATION BY MR. KINNEY:

11 Q. You can answer.

12 A. Not only in extreme situations.

13 Q. Okay. It's more common?

14 A. It's more often than not.

15 Q. Okay. So you have -- So Pan American
16 doesn't follow this particular guideline
17 from the Munich Re manual.

18 Is that right?

19 MR. EVANS:

20 Objection. This is one sentence
21 out of a three-page section. I can't
22 say that that's an accurate -- I
23 believe it misstates the document.

24 EXAMINATION BY MR. KINNEY:

25 Q. You can answer.

26

1 A. We do not follow the verbiage extreme.

2 Q. Why not?

3 A. We do it for a good majority of our
4 claimants to get a full objective
5 evaluation of their disability.

6 Q. So more than half of the claimants you send
7 to an independent medical examiner?

8 A. I would say --

9 MR. EVANS:

10 Can I object?

11 I didn't hear the end of your
12 question.

13 MR. KINNEY:

14 Let me just say it again.

15 EXAMINATION BY MR. KINNEY:

16 Q. I thought I just heard you say a full
17 majority, and so I --

18 A. A good majority, correct.

19 MR. EVANS:

20 Well, can we back up?

21 I want to hear the end of your
22 question, because I didn't hear what
23 you are asking.

24 EXAMINATION BY MR. KINNEY:

25 Q. Okay. So my question is do more -- Does

26

1 Pan American require more than 50 percent
2 of disability claimants to go to an
3 independent medical examination?

4 A. We require I would say either an
5 independent medical examination or some
6 type of functional capacity testing, you
7 know, synonymous outside testing or
8 evaluation.

9 Q. For more than half of the claimants?

10 A. I would say yes, that's accurate.

11 Q. Okay. Do you know whether Ms. Mathews was
12 sent to an independent medical examination?

13 A. She was.

14 Q. Okay. Do you know who decided to send her
15 to an independent medical examination?

16 A. It was through advisement. So I would say
17 I made the ultimate decision.

18 Q. So did Mr. Jones come to you with a
19 question about that?

20 A. Any use of outside vendors other than our
21 medical director needs to be approved by
22 me.

23 Q. So the answer to my question was no, he did
24 not come to you?

25 A. He did come to me.

26

1 Q. Did he have a special question about using
2 an independent medical examination in this
3 case?

4 A. He had some information -- He expressed
5 some information to me that he thought it
6 would be helpful in evaluating this case.

7 Q. Okay. Now, do you recall what he told you
8 about that?

9 A. I don't recall exactly what he told me
10 about that.

11 Q. In general?

12 A. Generally that we could not objectively
13 confirm or deny the existence of disability
14 in this person.

15 Q. Did you review any documents to determine
16 whether Mr. Jones was right on that
17 subject?

18 A. I did.

19 Q. Do you recall what you reviewed?

20 A. I do not.

21 Q. Did you form an opinion as to whether or
22 not an independent medical examination was
23 appropriate in this case?

24 A. I did.

25 Q. And what opinion was that?

26

1 A. That it was appropriate.

2 Q. Okay. Do you recall why you formed that
3 opinion?

4 A. Because we could not confirm or deny
5 whether she was disabled.

6 Q. Okay. Once Pan American decides to send a
7 disability claimant to an independent
8 medical examination, how does it decide
9 what doctor to use?

10 A. We will generally get a reference from our
11 medical director. That is the most likely
12 scenario.

13 Q. Do you know if that was done in the Mathews
14 case?

15 A. I can't confirm or deny. I can't.

16 Q. Okay.

17 A. That's the most likely outcome.

18 Q. Are there any criteria that you use for
19 where an independent medical examination
20 will take place?

21 A. Well, we try to make it within, you know, a
22 geographic area.

23 Q. Okay.

24 A. Within the same state.

25 Q. All right. Well, of course, we are out in
26

1 California.

2 A. Right.

3 Q. Pretty big state.

4 So I just wonder is there a mileage

5 distance that you try to keep within?

6 A. You know, I -- You know, we don't know the

7 geographics of some of the areas. We

8 believe we take the closest person that we

9 think will, you know, perform the

10 services -- the best services, you know,

11 that they can provide.

12 Q. Okay. I would like you to turn to the next

13 page of this Munich Re document,

14 Exhibit #2, 1050.

15 A. Okay.

16 Q. The very first complete sentence on the top

17 of the page.

18 A. Okay.

19 Q. Usually claims professionals will be

20 satisfied that the claimant is disabled

21 within the meaning of the policy wording

22 and will approve benefits. On rare

23 occasions they will believe that reasonable

24 grounds exist to resist the claim.

25 Do you see that?

26

1 A. I do.

2 Q. Okay. Does that reflect your experience at
3 Pan American?

4 A. It does.

5 Q. That only rarely do you resist the claim.

6 Is that right?

7 A. We pay substantially more claims than we
8 resist.

9 Q. Okay. Approximately what percentage of
10 claims do you resist in disability?

11 A. One to two percent.

12 Q. I would like for you to turn to the
13 section at Bates stamp PAL 1056.

14 A. Okay. I am there.

15 Q. There's a section at the bottom half of the
16 page called Investigations and
17 Surveillance.

18 Do you see that?

19 A. Correct. I do see that.

20 Q. Okay. Before I go through that, let me
21 just ask you.

22 Under what circumstances does Pan
23 American place a disability claimant under
24 surveillance?

25 A. When we cannot confirm or deny disability.

26

1 Q. Okay. So every time that you can't confirm
2 or deny disability?

3 A. We use it as one of our investigative
4 tools.

5 Q. In what percentage of cases do you utilize
6 surveillance?

7 A. About ten percent.

8 Q. Okay. And is it correct to say that in
9 those ten percent of cases, all of those
10 ten percent also have an independent
11 medical examination?

12 A. I cannot -- I can't confirm that.

13 Q. Okay. Well, I would like for you to go to
14 the very last full sentence on the page
15 that you're looking at, PAL 1056.

16 A. Okay.

17 Q. In extreme cases claimants may be placed
18 under surveillance for several days and
19 their movements recorded.

20 Do you see that?

21 A. I do.

22 Q. Okay. Is that Pan American's policy, that
23 surveillance of that sort is only used in
24 extreme cases?

25 A. It's not.

26

1 Q. Do you know whether Ms. Mathews was placed
2 under surveillance?

3 A. She was.

4 Q. Who decided to do that?

5 A. Again, any use of outside vendors, the
6 decision is ultimately mine.

7 Q. Okay. So how did it come to your attention
8 that you might use outside surveillance in
9 this case?

10 Did Mr. Jones bring that up?

11 A. It was through Mr. Jones' recommendation.

12 Q. Okay. What did he say when he recommended
13 surveillance?

14 A. He thought it would be helpful in
15 determining whether the disability exists
16 or not.

17 Q. Okay. Do you know what Ms. Mathews'
18 disability is?

19 A. Some type of back and neck pain.

20 Q. Okay. What -- Well, Strike that.

21 Did you actually have anything to do
22 with hiring a private investigator to put
23 her under surveillance?

24 A. No.

25 Q. Who did that?

26

1 A. Mr. Jones.

2 Q. When you approved the surveillance request,
3 how long did you approve the surveillance
4 for?

5 A. I don't recall if it was for a specific
6 length of time.

7 Q. And it was your understanding that the
8 surveillance might show that Ms. Mathews
9 was not disabled.

10 Is that right?

11 A. That's correct.

12 Q. Okay. And what would you anticipate a
13 private investigator might find that would
14 show a claimant with Ms. Mathews'
15 disabilities was not disabled?

16 MR. EVANS:

17 Objection. Calls for speculation,
18 and assumes facts not in evidence.

19 EXAMINATION BY MR. KINNEY:

20 Q. You can answer.

21 A. I would expect that they would find -- I'm
22 sorry.

23 Repeat the question.

24 Q. Well, my question is this.

25 You authorized a private investigator

26

1 to put Ms. Mathews under surveillance --

2 A. Right.

3 Q. -- because you thought he might find that

4 she was not disabled.

5 Correct?

6 A. Right.

7 Q. Okay. What would you expect -- What thing

8 might he come back with which would show

9 she wasn't disabled?

10 A. Normal day-to-day activities.

11 Q. Like what?

12 A. Driving, walking, carrying objects, lifting

13 objects, bending, turning. Just general

14 day-to-day functions.

15 Q. Okay. Did you understand that Ms. Mathews

16 was disabled from driving?

17 A. I did not. I don't know if she was

18 disabled from driving.

19 From the video?

20 Q. No.

21 From when you authorized the video.

22 A. No.

23 Q. You didn't know, or you thought she was not

24 disabled from driving?

25 A. I did not know if she was disabled or not

26

1 from driving.

2 Q. Well, did you make an analysis of that in
3 determining whether or not to send out a
4 private investigator?

5 A. That was determined on Mr. Jones'
6 recommendation so --

7 Q. Okay.

8 A. We did not believe that she would have been
9 disabled from driving.

10 Q. Okay. Well, I guess my question is in Ms.
11 Mathews' case --

12 A. Uh-huh (affirmative response).

13 Q. -- what activity that could be seen by a
14 private investigator would demonstrate that
15 she was not disabled?

16 A. Those that would be involved in bending,
17 twisting, lifting. Those types of
18 activities.

19 Q. Okay. Is there a particular point in the
20 disability claim process where Pan American
21 typically sends out a private investigator
22 for surveillance?

23 A. Generally if we cannot confirm or deny
24 disability. So --

25 Q. So what -- Let me ask you this.

26

1 Would you typically send a claimant to
2 an independent medical examination first
3 before sending out a private investigator?

4 A. Generally.

5 Q. Have you ever sent a private investigator
6 out for surveillance of a claimant before
7 you sent the claimant to an independent
8 medical examination?

9 A. I couldn't confirm that.

10 Q. Have you ever sent a claimant to an
11 independent medical examination and sent
12 out a private investigator at the same
13 time?

14 A. We have.

15 Q. Why would you do that?

16 A. We would observe the actions to and from
17 the doctor's office.

18 Q. Have you done that in cases other than Ms.
19 Mathews?

20 A. We have.

21 Q. Have you ever seen a case of that sort
22 where the private investigator has provided
23 information that showed that the claimant
24 was not disabled?

25 A. Well, the private investigator --

26

1 MR. EVANS:

2 Objection.

3 Just to clarify, this is strictly
4 as to Pan American claims?

5 EXAMINATION BY MR. KINNEY:

6 Q. Yeah, I'm asking about as to Pan American.

7 You testified that there are occasions
8 where you send a private investigator out
9 to watch the claimant go to the doctor.

10 Is that right?

11 A. We send an investigator out to monitor
12 their -- them just prior to going to the
13 doctor, yes.

14 Q. Okay. Do you actually have the private
15 investigator watch the claimant drive to
16 the doctor's office?

17 A. That I can't confirm or deny.

18 Q. Okay. Can you think of -- I mean is there
19 a reason why Pan American would send a
20 private investigator to watch a claimant
21 drive to the doctor's office?

22 A. Well, generally to confirm -- to confirm
23 surveillance findings with what the doctor
24 may find strictly as a, you know, strictly
25 as an objective comparison.

26

1 Q. I see.

2 All right. I would like for you to go
3 back in Exhibit #2 to page PAL 1052.

4 A. All right.

5 Q. Are you there?

6 A. Uh-huh (affirmative response).

7 Q. And there's a section about -- it's about
8 halfway down called Independent Medical
9 Examinations.

10 A. I'm there.

11 Q. Okay. The second paragraph --

12 A. Okay.

13 Q. -- if you go to the second sentence, which
14 is referring to independent medical
15 examinations, it says, this tool is
16 normally used when some doubt exists about
17 the severity of the restrictions and
18 limitations being reported.

19 Do you see that?

20 A. I do.

21 Q. Okay. Is that when Pan American uses an
22 independent medical examination?

23 A. Yes, that's a correct statement.

24 Q. Okay. And in the Mathews case, was there
25 some doubt about the severity of the

26

1 restrictions and limitations being
2 reported?

3 A. There was not sufficient evidence to
4 confirm that she was disabled.

5 Q. How do you know that?

6 A. I have read through some of the file. I'm
7 familiar with certain aspects of the file.

8 Q. Okay. Prior to the independent medical
9 examination, had Pan American obtained
10 documents from Ms. Mathews' treating
11 physicians?

12 A. We did.

13 Q. Okay. And was there something in those
14 documents that led Pan American to believe
15 that there was doubt about the severity of
16 restrictions and limitations being
17 reported?

18 A. Those documents, along with other medical
19 records, were sent to our medical director
20 for review.

21 Q. Okay. And did you receive a review from
22 your medical director?

23 A. We did.

24 Q. Was it in writing?

25 A. It was.

26

1 Q. And what did it conclude?

2 A. It concluded that there was no objective
3 findings that her state of disability could
4 preclude her from performing her normal
5 work -- work duties.

6 Q. Okay. Is that writing in the claim file?

7 A. It is.

8 Q. Who's the doctor, the medical director?

9 A. Dr. Nudelman.

10 Q. Oh.

11 How long was it from the time you
12 received Dr. Nudelman's report until the
13 time that Pan American decided to send the
14 claimant to an independent medical
15 examination?

16 A. I don't know the time frame.

17 Q. Okay. How long would it typically be in a
18 situation where Dr. Nudelman says there's
19 no objective evidence?

20 A. I would say possibly 30 to 90 days.

21 Q. Okay. And during that 30 to 90-day period,
22 does Pan Am pay benefits typically to the
23 claimant?

24 A. In some cases.

25 Q. Okay. Let's go to page 1053.

26

1 A. Okay.

2 Q. At the bottom of the page there's a section
3 on rehabilitation.

4 Do you see that?

5 A. Yes.

6 Q. Have you read that section on
7 rehabilitation?

8 A. I have.

9 Q. Okay. Does the section on rehabilitation
10 in general reflect Pan American's practices
11 as to rehabilitation benefits under the
12 disability policies involved in the Mathews
13 case?

14 A. Some portions.

15 Q. What portions reflect Pan American's
16 policies?

17 A. That the idea is to return the claimant to
18 a place of normal employment and
19 effectively be able to end our claim.

20 Q. Okay. Go to the last sentence on page
21 1053.

22 A. Okay.

23 Q. Since the claimant is not normally
24 obligated to participate in rehabilitation
25 programs, most insurers consider motivation

26

1 as a prime factor in selecting candidates.

2 Do you see that?

3 A. Yes.

4 Q. Does that reflect Pan American's practices?

5 A. It does not.

6 Q. It does not?

7 A. No.

8 Q. Motivation is not a prime factor then in

9 Pan American's view.

10 Is that right?

11 A. We do not actively pursue claimants to
12 become rehabilitated.

13 Q. Is it your understanding that that sentence
14 refers to situations in which insurance
15 companies are actively pursuing claimants
16 to be rehabilitated?

17 A. There are some insurance companies that do.

18 Q. And that -- This sentence is written for
19 them, and not for a company like Pan
20 American.

21 Is that right?

22 A. This is general -- general application of
23 the -- of rehabilitation.

24 Q. Okay. But you don't utilize it at Pan
25 American, that particular sentence?

26

1 A. No.

2 Q. Okay. Let's go to the next sentence at the
3 top of the next page.

4 A. Okay.

5 Q. A goal of any responsible disability
6 insurer will be to minimize total liability
7 while providing equitable treatment to its
8 claimants.

9 A. Uh-huh (affirmative response).

10 Q. Is that a goal of Pan American Life
11 Insurance Company?

12 A. Yes.

13 Q. Is it a goal of Pan American Life Insurance
14 Company when it decides whether to utilize
15 rehabilitation?

16 A. Yes.

17 Q. Okay. So one of the factors that you
18 utilize in deciding whether or not to
19 provide rehabilitation benefits is whether
20 it will minimize Pan Am's total liability.

21 Is that right?

22 A. It -- I can't say for sure. I mean the
23 object is to have the person return to work
24 and discontinue the claim.

25 Q. Okay.

26

1 A. It may or may not limit our liability.

2 Q. Okay. But if having the person return to
3 work does not discontinue the claim, you
4 don't do it. Right?

5 A. The objective is that the person -- We
6 don't -- we don't -- we don't determine it
7 as a win win situation.

8 Q. And you don't authorize the rehabilitation
9 benefits. Is that right?

10 A. That's a correct statement.

11 Q. Okay. Did you review Ms. Mathews' claim
12 for rehabilitation benefits prior to the
13 time that Pan American denied that claim?

14 A. No.

15 Q. Okay. Have you reviewed that claim since?

16 A. Some aspects of it.

17 Q. Okay. What aspects have you reviewed?

18 A. The general claim file.

19 Q. Okay. Have you formed a personal opinion
20 as to whether or not the claim for
21 rehabilitation benefits was correctly
22 denied?

23 A. No.

24 Q. You don't know one way or another?

25 A. I haven't formed a personal opinion. I

26

1 have formed an objective opinion.

2 Q. Okay. Well, what is your opinion?

3 A. My opinion is that the occupation in which
4 she wished to endeavor would not ultimately
5 be a suitable occupation based on her
6 restrictions.

7 Q. What occupation did she wish to endeavor?

8 A. Nursing.

9 Q. And why would it not be suitable?

10 A. Nursing generally requires physical
11 portions of that job when it comes to, you
12 know, specifically patients. Moving
13 patients, lifting patients, administering
14 care to patients.

15 Q. And you're not aware of any nursing jobs
16 that don't require those manual skills?

17 A. I believe she specifically stated RN. I
18 can't be sure.

19 But I would say I don't know of any
20 nursing occupations that don't -- do not
21 require -- that would not require some type
22 of physical abilities.

23 Q. Okay. Have you made any investigation into
24 that particular subject, the physical
25 requirements of a nursing occupation?

26

1 A. We have not.

2 Q. Okay. Have you looked at any sources of
3 information on that subject, such as the
4 Dictionary of Occupational Titles?

5 A. I have not.

6 Q. In your experience as a disability claims
7 representative and claims manager, have you
8 dealt with nurses who were disabled?

9 A. I have.

10 Q. Okay. And in the course of doing that
11 work, have you had the obligation to look
12 at the occupational duties of nurses?

13 A. I have.

14 Q. Okay. And do you know what a nurse does?

15 A. Well, a nurse specifically assists doctors
16 in caring for patients.

17 Q. Okay. But do you know what manual --
18 physical requirements there are to be a
19 registered nurse?

20 A. Not specifically.

21 Q. Okay. Do you know why Mr. Jones denied Ms.
22 Mathews' claim for rehabilitation benefits?

23 A. I believe he denied it, because when
24 responding to Ms. Mathews' request for
25 rehabilitation, we did not get a clear

26

1 answer or plan as to what this
2 rehabilitation would entail and how it
3 would expect to return her to normal work
4 activity in the future.

5 Q. Okay. And you have since reviewed the
6 claim since that determination was made not
7 to give her the benefit.

8 Is that right?

9 A. I have looked at aspects of the file.

10 Q. Okay. And do you believe that Mr. Jones
11 was correct to deny the claim on that
12 basis?

13 A. I do.

14 Q. What additional information should Ms.
15 Mathews have provided to Pan American such
16 that Pan American would have had sufficient
17 information to grant the claim?

18 A. We would have been able to make --

19 MR. EVANS:

20 I'm sorry.

21 Objection. Calls for speculation.

22 Go ahead.

23 THE WITNESS:

24 We would have been able to make,
25 you know, a determination or review

26

1 if we had known which school she was
2 planning to attend, how many course
3 hours she was planning to take, the
4 number of courses, the cost of -- you
5 know, of these courses, and her, you
6 know, pretty much, you know,
7 prognosis for going ahead and, you
8 know, completing such course work.

9 EXAMINATION BY MR. KINNEY:

10 Q. Okay. Did Pan American ask Ms. Jones to
11 provide that information?

12 A. We did.

13 Q. When?

14 A. After she made her request for the
15 rehabilitation benefit.

16 Q. Okay. Did she provide it?

17 A. She replied with not much information.

18 Q. Okay. Did Pan American explain to her what
19 additional information would be needed?

20 A. I don't recall. I think that was asked in
21 the original letter.

22 Q. Okay. Does Pan American have a duty to its
23 claimants to tell them what information is
24 needed to perfect their claim?

25 MR. EVANS:

26

4 EXAMINATION BY MR. KINNEY:

5 Q. You can answer.

6 A. I would say that was outlined in our
7 original letter.

8 Q. Okay. Did Pan American make any effort to
9 your knowledge to find out the information
10 on its own?

11 A. Not to my knowledge.

12 Q. Okay. To your knowledge does Pan American
13 have any duty to its claimants for
14 disability benefits to make an independent
15 investigation as to their
16 disability -- their rehabilitation
17 application?

18 MR. EVANS:

22 EXAMINATION BY MR. KINNEY:

23 Q. You can answer.

24 A. I think the claimant was given sufficient
25 opportunity based on our original letter to
26

1 provide the information that we requested.

2 Q. Okay. Well, that's not my question.

3 My question is does Pan American have
4 any obligation to make an independent
5 investigation beyond what the claimant
6 provides?

7 MR. EVANS:

8 Objection. Misleading, misstates
9 the law, calls for legal conclusion,
10 and vague and ambiguous.

11 EXAMINATION BY MR. KINNEY:

12 Q. You can answer.

13 A. I don't know.

14 Q. Do you know what a certified rehabilitation
15 specialist is?

16 A. No.

17 Q. So Pan Am has never used a certified
18 rehabilitation specialist to your
19 knowledge?

20 A. That's correct. We have never used one.

21 Q. Okay. Let's go to page 1073 of this
22 document.

23 This is a section called Claims
24 Disputes, and I am directing your attention
25 to the second paragraph of this document,

26

1 the second sentence.

2 Most major disability insurers have
3 established elaborate internal procedures
4 to review unfavorable adjudication
5 decisions before they are communicated to
6 the claimant.

7 Do you see that?

8 A. I do.

9 Q. Okay. Does Pan American Life Insurance
10 Company have elaborate internal procedures
11 regarding unfavorable decisions on
12 rehabilitation benefit claims?

13 MR. EVANS:

14 Objection. Vague, calls for
15 speculation.

16 THE WITNESS:

17 We have legal department review
18 when our findings are that we should
19 make an adverse decision.

20 EXAMINATION BY MR. KINNEY:

21 Q. Okay. And is that review performed before
22 the adverse decision is communicated to the
23 insured?

24 A. Yes.

25 Q. And is that done for rehabilitation

26

1 benefits?

2 A. It's done for all adverse decisions.

3 Q. Okay. Was it done in the Mathews case?

4 A. It was.

5 Q. Do you know when that was performed?

6 A. I don't recall.

7 Q. Okay. And what exactly was done in terms

8 of that?

9 A. The facts of the case were -- The claim
10 file was reviewed by legal. They reviewed
11 our policy language.

12 I can't say what else -- what other
13 research that the legal department did, but
14 they concurred --

15 MR. EVANS:

16 At this point I will object to the
17 extent that he is being requested to
18 provide privileged communications
19 with counsel.

20 MR. KINNEY:

21 All right. I would like to make
22 sure we have got the scope of the
23 objection.

24 You certainly have the right --
25 It's all right with me if you make
26

1 that objection, but I want to make
2 sure we have the scope of the
3 objection and it is clear.

4 Are you advising him not to
5 provide any information about the
6 review by counsel of the Mathews
7 claim?

8 MR. EVANS:

9 I am not. But I am instructing
10 him not to answer about specific
11 communications with counsel.

12 MR. KINNEY:

13 Okay. Well, I am going to have to
14 keep asking some questions, and you
15 can object and instruct him not to
16 answer.

17 MR. EVANS:

18 We will do that, and this may be
19 something we resolve after the break,
20 but go ahead.

21 MR. KINNEY:

22 Okay.

23 EXAMINATION BY MR. KINNEY:

24 Q. Did you personally send the file to the
25 legal department?

26

1 A. I did not.

2 Q. Okay. Did you tell Mr. Jones to do that?

3 A. I don't believe that I did.

4 Q. How do you know it was done?

5 A. I received either a request from Mr. Jones
6 to be a part of a meeting with legal on the
7 claim or from the legal department. I
8 can't be sure.

9 Q. Okay. And was there a meeting that
10 involved a lawyer?

11 A. From our company, yes.

12 Q. Okay. When was that meeting held?

13 A. I can't -- I don't know.

14 Q. Is there something in the claim file that
15 would tell you?

16 A. I don't know.

17 Q. Okay. How long -- Let me ask you this.
18 Were you present at the meeting?

19 A. I was.

20 Q. Okay. Who else was present?

21 A. Our legal counsel and Judy Norwalt, the
22 vice-president of administration.

23 Q. Okay. Was that Mr. Fraizer, who is sitting
24 here today?

25 A. I'm sorry?

26

1 Oh, was he the attorney for our
2 company?

3 Q. Yes.

4 A. No, it was not.

5 Q. Okay. Who was it?

6 A. Raymond Munna.

7 Q. Can you spell that?

8 A. M-U-N-N-A. Raymond.

9 Q. So there was you, Mr. Munna, Mr. Jones.

10 Is that right?

11 A. Correct.

12 Q. And the vice-president you just identified?

13 A. That's correct.

14 Q. Anybody else?

15 A. No.

16 Q. Where was the meeting held?

17 A. In a conference room.

18 Q. Okay. In the Pan American building across
19 the street here?

20 A. Correct.

21 Q. Okay. How long did the meeting last?

22 A. Approximately 30 minutes.

23 Q. Okay. What documents were present at the
24 meeting?

25 A. I don't recall.

26

1 Q. Was Ms. Mathews' request for disability
2 -- I'm sorry.

3 Was Ms. Mathews' request for
4 rehabilitation benefits present?

5 A. I don't recall.

6 Q. Okay. What did Mr. Jones say at the
7 meeting?

8 A. I don't recall.

9 Q. What did you say at the meeting?

10 A. I don't recall.

11 Q. What did Mr. Munna say at the meeting?

12 A. Mr. Munna concurred with Mr. Jones'
13 assessment that the -- that we should not
14 grant these benefits.

15 Q. Did he say anything else?

16 A. Not to my knowledge.

17 Q. Okay.

18 MR. EVANS:

19 Can I interpose an objection here?

20 I am providing a little leeway.

21 No waiver of the privilege is
22 intended at this point, but it's all
23 I can -- either I can object to every
24 single question or I don't.

25 MR. KINNEY:

26

1 That's up to you. I mean it is.

2 You know why I'm doing it. If you
3 want to interpose an objection, go
4 ahead.

5 MR. EVANS:

6 Okay. Well, I have already.

7 That's fine. That's fine.

8 I just wanted to make that for the
9 record, and if I have got objections,
10 I will start objecting.

11 MR. KINNEY:

12 Okay.

13 EXAMINATION BY MR. KINNEY:

14 Q. Did Mr. Munna say why he concurred with
15 Mr. Jones' decision?

16 MR. EVANS:

17 At this point I will invoke the
18 privilege, and instruct the witness
19 not to answer.

20 MR. KINNEY:

21 Okay. Let's go off the record a
22 second.

23 THE VIDEOGRAPHER:

24 We are going off the record. It
25 is 11:54. This is videotape number
26

1 two.

2 (Off the record.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 REPORTER'S CERTIFICATE

2

3 I, LINDY ROOT, Certified Court Reporter,
4 do hereby certify that the above-mentioned
5 witness, after having been first duly sworn by
6 me to testify to the truth, did testify as
7 hereinabove set forth;

8 That the testimony was reported by me in
9 shorthand and transcribed under my personal
10 direction and supervision, and is a true and
11 correct transcript, to the best of my ability
12 and understanding;

13 That I am not of counsel, not related to
14 counsel or the parties hereto, and not in any
15 way interested in the outcome of this matter.

16

17

18

19

20

21 LINDY ROOT

22 CERTIFIED COURT REPORTER

23 REGISTERED PROFESSIONAL REPORTER

24

25